

1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 2 R.I. DEPARTMENT OF HEALTH
 3 * * * * *
 4 PUBLIC HEARING: R.I. HOSPITAL,
 5 CON APPLICATION FOR HIGH
 6 INTENSITY ONCOLOGY/BONE MARROW
 7 TRANSPLANTATION PROGRAM
 8 * * * * *
 9 VOLUME I
 10 R.I. DEPARTMENT OF HEALTH
 11 3 CAPITOL HILL
 12 PROVIDENCE, RI 02908
 13 MARCH 9, 2007
 14 1:30 P.M.
 15 BEFORE: BRUCE MCINTYRE, HEARING OFFICER
 16 PRESENT:
 17 FOR R.I. HOSPITAL.... NIXON PEABODY, LLP
 18 BY: LINN FREEDMAN, ESQUIRE
 19 STEPHEN ZUBIAGO, ESQUIRE
 20 FOR ROGER WILLIAMS
 21 HOSPITAL..... ROGER WILLIAMS HOSPITAL
 22 BY: KIMBERLY O'CONNELL, ESQUIRE
 23 - and -
 24 NORMAND LAW, LTD.
 25 BY: CHARLES W. NORMAND, ESQUIRE
 26 - and -
 27 PANNONE, LOPES &
 28 DEVEREAUX, LLC
 29 BY: WILLIAM P. DEVEREAUX,
 30 ESQUIRE
 31 JOHN WALSH, ESQUIRE
 32 FOR THE DEPARTMENT... LAW OFFICE OF JOSEPH MILLER
 33 BY: JOSEPH MILLER, ESQUIRE
 34 ALSO PRESENT: MICHAEL DEXTER
 35 VALENTINA ADAMOVA
 36 DONALD WILLIAMS
 37 JOHN DONAHUE
 38 RUSSELL GROSS

1

(COMMENCED AT 1:30 P.M.)
 THE HEARING OFFICER: Again,
 welcome, everyone. This is a public meeting
 in the matter of the application for
 Certificate of Need for High Intensity
 Oncology/Bone Marrow Transplant Program
 filed on behalf of the Rhode Island
 Hospital. One of the affected parties,
 Roger Williams Medical Center, has filed a
 request for a public meeting, which brings
 us to this point today. As I said earlier,
 what I'd like to do, just to get started, is
 mark some documents and submissions just so
 they are part of the record appropriately.
 Everyone has seen them before, so there
 should be no surprises; and I'm going to
 begin with the February 23, 2007 Request For
 the Public Meeting pursuant to Section 10 of
 the Rules and Regulations For the
 Determination of Need for New Health
 Equipment and New Institutional Health
 Services. So, that will be --
 MR. MILLER: Mr. McIntyre, can
 that be marked as a Department exhibit?

3

1 E X H I B I T S
 2
 3 NO. DESCRIPTION PAGE
 4 (DEPARTMENT'S)
 5 1 REQUEST FOR PUBLIC HEARING 4
 6 2 NOTICE OF PUBLIC HEARING 4
 7 3 APPOINTMENT OF HEARING OFFICER 4
 8 4 RULES AND REGULATIONS FOR THE 5
 9 DETERMINATION OF NEED
 10 APPLICATION WITH ACCOMPANYING
 11 EXHIBITS 5

2

THE HEARING OFFICER:
 It will be D-1.
 MR. MILLER: That's what I was
 looking for. Thank you.
 (DEPARTMENT'S EXHIBIT 1,
 REQUEST FOR PUBLIC MEETING, MARKED IN FULL)
 THE HEARING OFFICER: The next
 will be the Notice of the Public Meeting
 that appeared in the newspaper. That will
 be D-2.
 (DEFENDANT'S EXHIBIT 2, NOTICE
 OF PUBLIC MEETING, MARKED IN FULL)
 THE HEARING OFFICER: The next
 item, D-3, is the Appointment of the Hearing
 Officer from the Director of Health.
 (DEPARTMENT'S EXHIBIT 3,
 APPOINTMENT OF HEARING OFFICER, MARKED IN
 FULL)
 THE HEARING OFFICER: D-4 is
 the Rules and Regulations for the
 Determination of Need for New Health Care
 Equipment and New Institutional Health
 Services, R23-15-CON. D-4.
 (DEFENDANT'S EXHIBIT 4, RULES

4

1 AND REGULATIONS FOR THE DETERMINATION OF
2 NEED FOR NEW HEALTH CARE EQUIPMENT AND NEW
3 INSTITUTIONAL HEALTH SERVICES, MARKED IN
4 FULL)

5 THE HEARING OFFICER: And
6 last, but certainly not least, will be the
7 application itself with all of the
8 accompanying exhibits, all of which will
9 become part of the public record and can be
10 reviewed by any party who wishes to see
11 them.

12 (DEFENDANT'S EXHIBIT 5,
13 APPLICATION WITH ACCOMPANYING EXHIBITS,
14 MARKED IN FULL)

15 THE HEARING OFFICER: Are we
16 ready to discuss --

17 MR. NORMAND: Bruce, on that
18 point, does that include the slide
19 submission from the first hearing as well as
20 the transcript tape of that hearing? It's
21 our expectation that would be part of the
22 full record.

23 THE HEARING OFFICER: I don't
24 see why not. Mr. Miller?

5

1 THE HEARING OFFICER: D-5 will
2 include the power point and the audiotape.
3 Does that cover it, Mr. Normand?

4 MR. NORMAND: Yes, it does.

5 THE HEARING OFFICER: The next
6 issue is the conduct of the hearing; and as
7 I said briefly before we got started, what I
8 would like to do is make the best possible
9 record for the Health Services Council. In
10 order to do that, they would like to see
11 clear, concise reasons for the need for the
12 application and clear and concise reasons
13 why the Roger Williams Medical Center wishes
14 to object to it.

15 So, along those lines, what I
16 have attempted to do is put together a
17 proposed order that gives everyone an
18 opportunity to say what needs to be said for
19 consideration for the Health Services
20 Council, yet does not delay, with undo and
21 repetitious material, the decision by the
22 Health Services Council, and ultimately, the
23 Director of Health. So, what we want to do
24 is get to the point quickly, concisely and

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1 MR. MILLER: I would agree.

2 THE HEARING OFFICER: Yes, I
3 agree.

4 MS. FREEDMAN: That's going to
5 be part of D-5?

6 MR. ADAMOVA: Part of D-5,
7 yes.

8 THE HEARING OFFICER: I don't
9 see it. Where is all of that?

10 MS. FREEDMAN: The application
11 is D-5?

12 THE HEARING OFFICER: The
13 application is D-5. Just what, I haven't
14 seen this power point.

15 MR. DEXTER: We are talking
16 about this right here.

17 MR. MILLER: I will donate my
18 copy.

19 THE HEARING OFFICER: I'm told
20 it's in the file.

21 MR. NORMAND: And also, the
22 tape transcript or the tape.

23 MR. DEXTER: The audiotape is
24 not physically in the file.

6

1 fairly. So, along those lines, why don't we
2 go through the order together? I know
3 counsel has been very helpful in the past in
4 making suggestions that make the hearing go
5 more smoothly, so why don't we begin with
6 Item Number 1?

7 MS. FREEDMAN: Sounds good.

8 MR. NORMAND: I'm focusing on
9 the word objector. It's rather negative.
10 Really, we requested a public meeting. And
11 I think unless the regulations specifically
12 calls that --

13 MR. MILLER: Are you on the
14 record as not being an objector?

15 MR. NORMAND: We filed a
16 request for a public meeting. We are going
17 to put information in and ask questions
18 about it. I think it's rather -- it implies
19 a negative tone, just being an objector for
20 the record, where we are essentially an
21 interested party that's filed for a public
22 meeting.

23 THE HEARING OFFICER: I have
24 no objection to the word interested party.

8

1 Do you, Mr. Miller?

2 MR. MILLER: Well, I construed

3 their remarks at the, at the hearing as

4 being somebody that objected to the granting

5 of it; but if they don't want to be noted as

6 an objector, that's their privilege.

7 THE HEARING OFFICER: Would

8 interested parties suffice for everybody?

9 MR. NORMAND: Yes.

10 THE HEARING OFFICER:

11 Interested parties it will be.

12 MR. MILLER: The framework has

13 got to be, however, that because this is

14 used, this word is used so often later on, I

15 think that we would substitute interested

16 party, Roger Williams Hospital, so as to

17 distinguish it from just any interested

18 party; and then we would have to substitute

19 later on when, wherever the word -- we have

20 used the word parties in here, so we will

21 have to say something about the word parties

22 includes the Applicant and interested party,

23 Roger Williams Hospital, otherwise we are

24 going to be doing this form all over again;

9

1 and that the word parties will mean the

2 Applicant and interested party -- I have no

3 problem with the categorization that they

4 prefer.

5 MR. NORMAND: And we have no

6 problem with kind of conforming changes

7 throughout the document to make it work

8 right.

9 THE HEARING OFFICER: And it

10 is Roger Williams Medical Center, correct?

11 MR. MILLER: No, it's not.

12 It's Roger Williams Hospital, as I

13 understand. Let's make that clear.

14 THE HEARING OFFICER: Who's

15 here?

16 MS. O'CONNELL: Yes. The CON,

17 in 1992, was granted to Roger Williams

18 Medical Center. The actual corporate entity

19 to this action is the hospital.

20 THE HEARING OFFICER: Okay.

21 Very good. Miss Freedman?

22 MS. FREEDMAN: I really don't

23 want to belabor the point; but if we call

24 Roger Williams Hospital an interested party,

10

1 then what are other interested parties, who

2 will be effected persons? It just makes it

3 a little --

4 THE HEARING OFFICER: If they

5 are not here, the party is small.

6 MS. FREEDMAN: So, throughout

7 this forum, when objector is noted, we are

8 going to say interested party? And that

9 shall mean Roger Williams Hospital?

10 THE HEARING OFFICER: We will

11 refer to them as Roger Williams Hospital --

12 interested party, Roger Williams Hospital.

13 MR. NORMAND: That's what I

14 understood Joe to say.

15 THE HEARING OFFICER: Anything

16 else in Item Number 1?

17 (PAUSE)

18 THE HEARING OFFICER: Hearing

19 nothing, let's move on to Item Number 2.

20 MR. MILLER: Just before we

21 leave it to be -- okay. Go ahead. We are

22 on Number 2. I will work it from there. Go

23 ahead.

24 THE HEARING OFFICER: Any

11

1 comments on Number 2?

2 MS. FREEDMAN: No.

3 THE HEARING OFFICER:

4 Number 3?

5 MR. MILLER: Now, this is

6 where we got this concept that the

7 interested party, Roger Williams Hospital,

8 is going to submit this court document.

9 Those are the kinds of things that I want to

10 have clear.

11 MR. DEVEREAUX: Correct.

12 MR. NORMAND: I had a question

13 as to relevancy or purpose for having Rogers

14 Williams take part of its limited document

15 time or scope to state what its present bone

16 marrow program consists of. It's my

17 understanding we have received independent

18 requests from the Health Department with

19 respect to utilization and other statistics.

20 I'm not quite sure, since it's the Applicant

21 that needs to establish a need and we have

22 the existing program, why there's the

23 present bone marrow program and what it

24 consists of as part of this request here.

12

MR. MILLER: Well, I can tell you why we would want it. First of all, it's only three pages. We are not asking you to write a book. Secondly, it certainly helps the Department to put into focus and it would be of great assistance to the Health Services Council to have something in a three-page rather than long, drawn out -- candidly, I don't know why you wouldn't want to volunteer it.

MR. NORMAND: We are not saying we are not going to volunteer it. It's only three pages, and that's the crux of the matter. We would rather have the three pages, or whether it's more pages, to say why we think their application ought not be granted as opposed to defending our program that, as far as we know, has no problems in the current program.

MR. MILLER: This is not meant to mean that you're confined to these pages. This is to give some kind of plain, user-friendly type of three-page document where you represent, in core reasoning, that

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issue.

MR. NORMAND: Good. So summary --

THE HEARING OFFICER: Hold on. I want to make something clear. What we are having is a dialogue between counsel. We are not going to have that anymore.

MR. NORMAND: I'm sorry, what?

THE HEARING OFFICER: We are not going to have a dialogue between counsel. If you want to be recognized, you will be recognized through me. We want to do this orderly. Because, most importantly, the Council they are not here. They need to be able to follow this, and they need to follow it through this transcript. We are just not going to be going back and forth like it's a tennis match.

MR. NORMAND: Understood. I'm sorry. My question, Mr. Hearing Officer, if we could get clarification as to what's the intent of this section. If the summary is simply a summary that can be expanded upon elsewhere in the record, if that is, in

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fact, the case, then we have no problem with the way this is written. If this section is intended to mean, you know, you are limited to these three pages we, then we would have an issue as to why we have to spend part of those three pages away from the core issue; and that is what the Applicant has failed to do in their application.

THE HEARING OFFICER: Well, it seems to me that the purpose of this whole thing is to assist the Council in making their decision. From your perspective, if you want to put documents in front of them, which give them a clear idea on why you would object to this, if I may use that term, give them a description of what your current program is about, then you're free to supplement the record in any way you see fit, essentially.

MR. NORMAND: Then that would be fine.

MR. WALSH: John Walsh, Mr. Hearing Officer, for Roger Williams Hospital. As part of this, we would be

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permitted to have attachments we might want to refer to that would go into the record?

THE HEARING OFFICER: Yes. As part of the record, you can have attachments. What I do not want, however, is a banker's box full of documents.

MR. WALSH: No, that's not what I want. We have two or three documents.

MR. NORMAND: The way I interpret it -- if I can clarify -- the way I interpret this is a summary which will help provide a road map to the Council. I will use a concrete example. Roger Williams has a brochure that it gives to its patients that is ten pages or whatever, that that can come into the record as part of the explanation?

THE HEARING OFFICER: Sure. Absolutely.

MR. NORMAND: Then I have no problem. It's really a matter of how, interpreting how this was drafted.

THE HEARING OFFICER: Anything

16

1 else on Number 3?
 2 MR. WALSH: One other issue I
 3 wanted to put on the record. I don't know
 4 if any co-counsel mentioned this.
 5 Obviously, as things go, various issues may
 6 come up. We are not going to be held to the
 7 preliminary statement in terms of raising
 8 issues? In other words, if we raise issues
 9 of why it shouldn't be granted based in this
 10 three-page statement, as this unfolds --

11 THE HEARING OFFICER: As you
 12 go through this, you will see there will be
 13 plenty of opportunity to supplement and
 14 raise issues and there's going to be an
 15 opportunity where all the testimony is going
 16 to be given and reasonable questioning; so,
 17 we are going to get to those parts, and I
 18 think when you read the document in its
 19 entity, you will see that almost everything
 20 has been considered; and I'm sure you will
 21 have some suggestions, but we will hear them
 22 at that time.

23 MR. NORMAND: Thank you for
 24 the clarification.

17

1 MR. WALSH: Thank you.
 2 THE HEARING OFFICER:
 3 Number 4?
 4 MS. FREEDMAN: Do we want to
 5 do the due dates now or later?
 6 THE HEARING OFFICER: Let's go
 7 through the documents and see if there's any
 8 substantive changes, and then we will get
 9 into what's fair, a fair time for counsel to
 10 prepare the documents and respond.

11 MS. FREEDMAN: Okay. No
 12 problem with Number 4.

13 THE HEARING OFFICER: Okay.

14 MR. NORMAND: That's fine.

15 THE HEARING OFFICER: Moving
 16 on to Number 5.

17 MS. FREEDMAN: I don't have a
 18 problem with Number 5.

19 MR. NORMAND: Just a
 20 classification. The due date referenced
 21 here is the due date that's going to be
 22 established here as opposed to the ones up
 23 above; they are separate due dates, right?

24 THE HEARING OFFICER: Correct.

18

1 And part of the purpose of this is to give
 2 everyone an opportunity to review -- we
 3 don't have discovery in these public
 4 meetings. We want to give everybody an
 5 opportunity to review part of the record,
 6 think about it, have the time to respond.
 7 So, when we get into the public hearing,
 8 oral part of it, we have -- everyone has had
 9 an opportunity to see, digest and ask
 10 relevant, poignant and helpful questions.
 11 Number 6?

12 MS. FREEDMAN: I don't have a
 13 problem with Number 6.

14 MR. NORMAND: That's fine.

15 THE HEARING OFFICER:
 16 Number 7? We are doing well. How about
 17 Number 8?

18 MS. FREEDMAN: Wait.

19 THE HEARING OFFICER: We just
 20 crossed the halfway mark.

21 MS. FREEDMAN: I assume, if I
 22 may, that with respect to Number 7, we are
 23 talking about our cases in chief as opposed
 24 to rebuttal?

19

1 MR. DEVEREAUX: Yes.

2 THE HEARING OFFICER:

3 Correct.

4 MS. FREEDMAN: So that, I
 5 assume, counsel will work together with
 6 respect to presenting information to the
 7 other on rebuttal witnesses in a timely
 8 manner but not necessarily within five days
 9 before; is that fair?

10 THE HEARING OFFICER: That's
 11 fair, but we will get to the issue of
 12 rebuttal witnesses later.

13 MS. FREEDMAN: Okay. All
 14 right.

15 THE HEARING OFFICER: But
 16 please bring that up again. Number 8?

17 MS. FREEDMAN: I don't have a
 18 problem with that.

19 MR. MILLER: Mr. Chairman,
 20 when we talked, there's a possibility that
 21 we would have, as a Department, some written
 22 submissions so that -- I just can't predict
 23 it right now -- but when something comes
 24 into us or something that we see that isn't

20

1 in the record that belongs in the record, I
2 want it to be understood that we probably
3 will be making motions to put it in. We are
4 going to get to the application and other
5 things right on the table here.

6 THE HEARING OFFICER: Yes.
7 You know, would you kindly bring that issue
8 up when we get to Item Number 14,
9 Mr. Miller, and we can agree on some
10 language at that time?

11 MR. MILLER: Sure. Right.

12 THE HEARING OFFICER: So,
13 Number 8 is fine? How about Number 9?

14 MS. FREEDMAN: Mr. McIntyre, I
15 just have a clarification. I assume that
16 that's for each witness?

17 THE HEARING OFFICER: No.

18 MS. FREEDMAN: Then I can tell
19 you that we will not be able to present our
20 case in chief in two hours.

21 THE HEARING OFFICER: What do
22 you expect you think --

23 MS. FREEDMAN: It will take us
24 probably ten hours.

21

1 Hospital believes it's going to take ten
2 hours, essentially, to present their case, I
3 mean one alternative is to do very limited
4 depositions by the parties of say two or
5 three witnesses, and then we may not even
6 need to make -- we can present those
7 transcripts potentially to the Hearing
8 Officer rather than take up time here?

9 THE HEARING OFFICER: Well,
10 interesting suggestion, and I appreciate it;
11 but one of the things we do not want to get
12 into here is things that look like a
13 contested case hearing; and once you start
14 down that path, it is very, very difficult
15 to get everybody back onto the public
16 meeting path, and this is really more like
17 any other public meeting that you might see
18 at a town council or zoning board or
19 anything else.

20 MR. DEVEREAUX: But I'm sure
21 you and I have been at those that have gone
22 on for ten hours.

23 THE HEARING OFFICER: We have.
24 Presumably, we can do a better job focusing

23

1 THE HEARING OFFICER: Well,
2 sitting here today, I can tell you,
3 unequivocally, you're not going to get ten
4 hours. It's not going to happen. If you
5 can't put a case on in less than ten
6 hours --

7 MS. FREEDMAN: I'm talking
8 about with cross. With cross-examination, I
9 anticipate that, that it will be between
10 eight and ten hours to present our case in
11 chief.

12 MR. DEVEREAUX: Can I make a
13 suggestion?

14 THE HEARING OFFICER: Sure.

15 MR. DEVEREAUX: I know that,
16 you know, the rules are -- well, we are
17 going by administrative rules, and I look at
18 Rule 10 --

19 MS. FREEDMAN: Billy, can you
20 speak up?

21 MR. DEVEREAUX: Yes, I don't
22 want to belabor, and obviously, I understand
23 that the Hearing Officer wants to focus and
24 move it along quickly. If the Rhode Island

22

1 ourselves than lay people on a town board or
2 commission. Well, I think Rhode Island
3 Hospital makes a good point. If we are that
4 far off on what we think the anticipated
5 time schedule is, then we certainly need to
6 rethink two hours. The original number was
7 four. I'm going to be honest with you, it
8 was me that cut it down in half; because I
9 felt as though the documentation that you're
10 going to submit would include most of the
11 important information you would like to have
12 the Health Services Council consider; and
13 that by the time you got a live person in
14 the witness chair so-called or to the
15 podium, if you will, that they would be
16 sticking to a very scripted list of
17 comments -- or how about this? Why don't we
18 make that number four hours for the time
19 being?

20 MS. FREEDMAN: For direct, for
21 my case, not including cross?

22 THE HEARING OFFICER: There
23 won't be any cross-examination as such.
24 What there will be --

24

<p>1 MS. FREEDMAN: Questioning by 2 others. 3 THE HEARING OFFICER: Is 4 asking of reasonable questions. 5 MS. FREEDMAN: Sorry. 6 MR. MILLER: Can I make a 7 comment? 8 THE HEARING OFFICER: Sure. 9 MR. MILLER: The four hours, 10 my understanding of the four hours was 11 applicable to direct. We don't have 12 cross-examination, in the classical sense, 13 because this is not a contested case kind of 14 proceeding. But the closest thing to it 15 under the rule was the reasonable 16 questioning. 17 That was intended, at least 18 from my point of view, to be the 19 administrative substitute for 20 cross-examination. So, what we were talking 21 about, for one hour here, when it was on 22 two, would have been the equivalent to 23 cross-examination, and cumulatively that the 24 person that had two hours for direct had one</p> <p style="text-align: right;">25</p>	<p>1 mean we are the only ones who have a bone 2 marrow transplant unit, so we are the 3 effected interested party; and so, we are 4 probably the most interested party. And 5 obviously, are going to have some questions 6 that we want to ask about the necessity of 7 this application. 8 So, and I think Mr. Miller 9 stated it pretty accurately in sort of an 10 administrative way of saying it's another 11 word for cross-examination, because we are 12 going to have some questions that we are 13 going to want to put to those witnesses. 14 What I'm hoping is, because I think you have 15 been pretty, I mean I agree with the way 16 this is laid out in that this sort of 17 mandates open discovery, for lack of a 18 better word, where we are going to say here 19 are our witnesses, here's what we expect 20 them to say. I'm hoping we can come back to 21 you, if, for instance, we see something and 22 say, and we are looking at the documents, 23 and we feel that there are other documents 24 that we would like to see that are relevant</p> <p style="text-align: right;">27</p>
<p>1 hour for cross. So, theoretically, if you 2 had four hours for direct, you have two 3 hours for cross. I'm just throwing that 4 out. 5 MS. FREEDMAN: I can live with 6 that. I can live with trying to stay within 7 four hours for my case in chief, for my 8 direct. 9 THE HEARING OFFICER: It would 10 be very helpful if we could get it done in 11 four hours of direct oral testimony. I'm 12 going to put in two hours for reasonable 13 questioning for the time being, but I'm 14 going to leave it up to my discretion during 15 the conduct of this. If we start to get 16 repetitive and et cetera, et cetera, to cut 17 it off. So, just be forewarned and just 18 keep it in mind. 19 MR. DEVEREAUX: Can I just 20 make one point? Maybe you can clarify. I 21 will try to speak up. Even though 22 Mr. Normand has sort of neutralized the term 23 objector, I mean the fact is I don't want to 24 ignore the rhinoceros in the back yard. I</p> <p style="text-align: right;">26</p>	<p>1 that we think ought to be in front of you. 2 I'd rather deal with that ahead of time than 3 get in the middle of an examination, and you 4 know, we ask somebody a question and they 5 say, well, I relied on these documents, and 6 they are not here. We don't, because we, 7 candidly, I would then ask if I could have a 8 time-out and come back and question or put 9 that witness back on as my own witness. I 10 don't know if we can build in some 11 conference where, after we get all this 12 material -- and I think both parties can 13 work together on this, so that we have 14 a fair, open process of what people are 15 expected to say and what documents they are 16 going to rely on to make their points. 17 MS. FREEDMAN: We are going to 18 have all the documents already. Everyone 19 has to submit the documents that they are 20 going to use -- 21 MR. DEVEREAUX: Right. 22 MS. FREEDMAN: -- during their 23 presentation. 24 MR. DEVEREAUX: Right, but</p> <p style="text-align: right;">28</p>

1 what I'm saying is if I get a summary of one
2 of the witnesses, one of the main witnesses
3 you have, and I look at all the exhibits;
4 and when I look at the summary and I look at
5 the exhibits and I say, gee, there might be
6 some more exhibits that I would like to ask
7 for, documentation that I would like to ask
8 about, I would rather bring it to

9 Mr. McIntyre before we have the hearing
10 either by a written request --

11 THE HEARING OFFICER: When we
12 did this tightened version of it the last
13 time on the one-for-one, and I do recall
14 there were instances where counsel said,
15 hey, this was a good idea, but we really do
16 need this or we really do need that, and the
17 parties stipulated to it along the way; and
18 it made for a nice, smooth --

19 MS. FREEDMAN: Right.

20 THE HEARING OFFICER: -- way
21 of going about doing business without doing
22 it in front of everyone at a, at the full
23 public meeting. So, if things come up along
24 the way, I would like to be available to

29

1 address them on an as-needed basis. I mean
2 the whole idea is to be fair. No one is
3 going to short term, short circuit the
4 Applicant's ability to put on what they feel
5 they need to put on or Roger Williams
6 Hospital's ability to ask reasonable
7 questions and get the information it feels
8 it needs as well, as long as we all
9 understand that it's not going to be this
10 big cross-examination thing. It's not going
11 to be anything, and I will make a
12 determination along the way how far down
13 that road we are going to go. It will be
14 fair, but it's not going to be an
15 unlimited -- okay.

16 MR. DEVEREAUX: That's,
17 frankly, what we are -- yeah, that's why we
18 rather bring those issues to you ahead of
19 time.

20 THE HEARING OFFICER: Things
21 come up along the way. People get busy. A
22 deadline has to be missed, for good reasons.
23 We understand that. This isn't the only
24 thing you're all doing. The Department

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1 understands that. What we want to do is
2 keep, to the extent possible, to the
3 statutory time frame in which the Department
4 is supposed to act. Okay. And that's the
5 point of the whole thing. So, no reasonable
6 request for additional time or a few extra
7 pages will be denied, as long as it is just
8 not morphing out of control, okay?

9 MR. DEVEREAUX: I trust
10 Mr. Zubiago and Miss Freedman, for now.

11 (LAUGHTER)

12 MR. ZUBIAGO: Give it right
13 back at you.

14 THE HEARING OFFICER: As good
15 an endorsement as I have ever heard. Okay.
16 Are we ready for Number 10?

17 MS. FREEDMAN: I'm fine with
18 10.

19 MR. DEVEREAUX: With experts,
20 I mean I just think it's better to have
21 maybe a little more time like ten days in
22 advance. I think we both should probably
23 know who our experts are going to be.

24 THE HEARING OFFICER:

31

1 Mr. Miller, any objection to 10?

2 MR. MILLER: No. What they
3 want to agree to on those kinds of things --

4 MR. DEVEREAUX: I'm sorry, I
5 should go back to you.

6 MR. MILLER: -- is maybe we
7 could put at least five days in advance.

8 THE HEARING OFFICER: We will
9 just put ten days there for now. Once
10 again, if someone needs a little extra time,
11 for whatever good reason, it will be
12 granted.

13 MR. MILLER: So, we are
14 substituting ten for five?

15 THE HEARING OFFICER: Yes.
16 Item Number 11?

17 MS. FREEDMAN: Can I just have
18 a clarification? I assume that the way the
19 process will work is like it has in the past
20 where we will each receive our binders and
21 the bankers' boxes, hopefully not, of the
22 documentation. And then we will indicate to
23 the other which documents we are going to
24 object to three days prior to the witness

32

1 being called as a witness.

2 My only concern is I want to
3 make sure that there isn't a waiver of an
4 objection during the public meeting process
5 during the questioning, because although we
6 received the binder of documents, we are not
7 necessarily sure how they are going to be
8 used during the questioning of the witness.
9 I just don't want to waive any right to
10 object during the public meeting during the
11 questioning itself. That's all. I don't
12 have any problems with objecting, but
13 sometimes you don't know how the documents
14 are going to be used with the witness. So,
15 I just want to be able to object to it in
16 the manner in which it's being used at the
17 public meeting, if necessary.

18 MR. DEVEREAUX: I think the
19 way it's written --

20 THE HEARING OFFICER: Sure.

21 MR. DEVEREAUX: I think the
22 way it's written, Linn and Mr. McIntyre, is
23 that the anticipated objections would be to
24 written evidence or document; so, clearly,

33

1 if somebody says something in testimony
2 different, I would assume you could bring
3 that to Mr. McIntyre's attention. I don't
4 have a problem with it. I don't know if you
5 want to make it five days just so people
6 aren't scrambling around three or two days
7 before, if there is an objection, to try to
8 cure it.

9 MS. FREEDMAN: This, also,
10 assumes that, before I object three days
11 before the witness, I know which witness is
12 going on which day; so, we have to be up
13 front with each other when we are presenting
14 the witnesses, the order of the witnesses
15 and what days they are going to be
16 presented. I don't have a problem with
17 three days before, but with the
18 understanding we will be talking about when
19 we are presenting our witnesses.

20 THE HEARING OFFICER: Well,
21 during the time I have been here, I have
22 never been able to stop counsel from
23 objecting at hearings.

24 MS. FREEDMAN: Fair enough.

34

1 As long as we don't waive that.

2 THE HEARING OFFICER: I
3 haven't tried duct tape yet. That's
4 reasonable. Look, it's going to be a
5 reasonable thing. You know, counsel has
6 been very good over the years with each
7 other and with the Department about these
8 types of issues. It's just going to be
9 reasonably -- reasonable time is going to be
10 given to everyone; and if something comes up
11 at the hearing that's unanticipated, we will
12 all address it appropriately.

13 MR. NORMAND: In terms of, in
14 the spirit of unanticipated, in here it says
15 three business days and elsewhere we have
16 five days, not necessarily limited to
17 business days. You know, I haven't been
18 able to think through how this would come
19 through. So, as long as we have that
20 ability to do it in a reasonable fashion, I
21 think that works.

22 MR. ZUBIAGO: It should be
23 consistent. I think business days,
24 workdays, Monday through Friday.

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1 THE HEARING OFFICER: Yes.

2 MR. DEVEREAUX: I work on
3 Saturdays.

4 MR. ZUBIAGO: I work on
5 weekends, too.

6 THE HEARING OFFICER: I know
7 everybody does. Non-necessary employees
8 here at the Department of Health have been
9 furloughed. Okay. Number 11 is all set,
10 right?

11 MS. FREEDMAN: Yes.

12 MR. DEVEREAUX: Yes.

13 MR. MILLER: Was there an
14 earlier one where there was days and now
15 that's going to be made business days; is
16 that what you said? Number 10, for
17 instance, is that what you were saying?

18 THE HEARING OFFICER: Yes.
19 For the record, all days referred in the
20 order will be business days.

21 MR. MILLER: Okay. All right.

22 THE HEARING OFFICER:
23 Number 12?

24 MS. FREEDMAN: We are all set

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1 with 12, 13 and 14.

2 MR. DEVEREAUX: I think they
3 are fine. I don't know if we want to agree
4 on a date to try to at least hold our feet
5 to a fire on a stipulation. I think we
6 ought to work towards stipulating to as many
7 facts as we can and maybe put in a joint
8 stipulation.

9 THE HEARING OFFICER: If you
10 can do that, that's perfectly acceptable.

11 MS. FREEDMAN: And we can
12 talk. I think if we go through and figure
13 out what our timing is, we can maybe put a
14 deadline on it. That will push us to try to
15 work out the joint stipulation.

16 THE HEARING OFFICER:
17 Mr. Miller wanted to add something for
18 Number 14.

19 MR. MILLER: Well, I expected
20 we would probably put Mr. Zimmerman on to
21 testify.

22 THE HEARING OFFICER: Yes.

23 MR. MILLER: And there may be
24 issues or documents that we deem appropriate

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1 to be added to the record; so, I would like
2 14 to include, may submit written questions
3 or present, or present oral or written
4 testimony or documents.

5 MS. FREEDMAN: And --

6 MR. MILLER: And I don't know
7 when that would come up. It could come up
8 almost at any time. For the most part, if
9 not -- well, let me withdraw that. If, when
10 we get something that we think belongs, we'd
11 want to bring it to your attention, both
12 sides.

13 THE HEARING OFFICER: Yes.

14 MR. MILLER: Anybody that
15 doesn't like it can make a comment that it
16 ought not to go in and you rule on it.

17 THE HEARING OFFICER: Right.

18 MR. MILLER: But I want to be
19 able to present it.

20 THE HEARING OFFICER: Well,
21 the Division of Health Services Development
22 certainly, from my perspective anyway,
23 Health Systems Development, has an
24 obligation to the Health Services Council to

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1 put relevant information in front of them;
2 and the interested parties should have an
3 opportunity to comment on it, object to it,
4 do whatever they want with it to represent
5 their clients, as they see fit; so, my own
6 belief is that the Department or the
7 Division ought to be able to do that at any
8 time it sees fit in the course of the
9 proceedings.

10 I mean it had an obligation to
11 do that for the Council and it will be done
12 in such a way as to be fair to everyone.
13 And if in the middle of the proceeding
14 somewhere along the line it comes to the
15 Department's attention that something needs
16 to be considered, then we will address that
17 at that time; is that fair enough?

18 MR. NORMAND: Yes. I have a
19 clarification as to distinction. There are
20 certain types of information that the
21 Department knows now that it would want to
22 add in, and there may be some information
23 that's unknown that comes to its attention
24 that it will want to add in. At least with

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1 respect to that, such as consultant reports
2 or expert reports like Zimmerman, we know
3 for a fact it's going to come in, can we
4 have in the order something that states,
5 either with time frames or whatever, in
6 terms of Applicant or interested party
7 getting that and having time to be able to
8 react to it. We assume it's going to be
9 consistent with past reviews on bone marrow
10 in terms of its limits and things like that;
11 but we would like to have the opportunity to
12 just, not just open-ended say they can put
13 it in. For those type of things, for those
14 we know we get them a certain amount of time
15 and have the ability to provide some
16 reaction to them. I think that's consistent
17 with the way it's been done in the past.

18 THE HEARING OFFICER:

19 Mr. Miller?

20 MR. MILLER: Let me say this,
21 I would propose to offer whatever we have up
22 to this point, to make it part of the record
23 now; and what we don't have, we don't have;
24 and when we get it, we could present it; but

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1 whatever we've got, received as part of this
2 application or that's a public document with
3 the Department, I would propose you make it,
4 including the documents that -- I don't
5 think they are in yet but I would hope they
6 would be.

7 THE HEARING OFFICER: Why
8 don't we do this then? This is going to be
9 Department's 5. This record will be
10 supplemented as the Department sees fit
11 along the way with notice to all parties
12 along the way. In other words, if
13 Mr. Miller and Mr. Dexter and Valentina
14 decides that something needs to be in the
15 record, they will notify both hospitals and
16 it will become part of the record, and you
17 can deal with it in any way you see fit
18 along the way.

19 MR. NORMAND: That, that's
20 fine. My point, I guess, was a different
21 point that I wanted to get clarified. For a
22 report, such as Zimmerman, where we know
23 there's going to be one --

24 THE HEARING OFFICER: We know

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1 it's coming.

2 MR. NORMAND: We know it's
3 coming. It's going to be in. You know,
4 rather than us go forward and assume that
5 it's going to be consistent with the way it
6 had been done and go down the lines, and
7 then that's added after we have exhausted
8 our time limits or other things like that or
9 we are bumping against some deadlines, I
10 think it would be important to have in the
11 order, for those that we know that are
12 coming, an acknowledgment that once it gets
13 into the record, whenever that is, that the
14 parties have an opportunity to then, you
15 know, within a certain period of time,
16 submit either written or oral responses to
17 that or reactions to it.

18 THE HEARING OFFICER: Well,
19 Mr. Zimmerman is here. Why don't we ask --

20 MR. MILLER: I'm not putting
21 him on today.

22 THE HEARING OFFICER: -- what
23 the plans are for his report, and what -- is
24 this something that is sort of underway? Is

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1 it going to be based on the administrative
2 record? Do you have a sense of the timing
3 on it?

4 MR. MILLER: I don't, I'm
5 going to object to any inquiry into the
6 method of his expertise or what he's going
7 to consider or anything along that time. If
8 that's the inquiry, I object to that kind of
9 an inquiry --

10 THE HEARING OFFICER: Well,
11 his expertise is --

12 MR. MILLER: -- his reasoning
13 processes and his development of his reports
14 and the data and how he goes about it. When
15 the final report comes out, that's what
16 you've got to deal with, not the mental
17 processes that go into it.

18 THE HEARING OFFICER: So, the
19 methods are the methods, and the report will
20 come out when it comes out.

21 MR. MILLER: When it comes
22 out.

23 MR. NORMAND: I wasn't
24 interested in getting into the methodology

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1 as much as the ability to have sufficient
2 time to respond to whatever it contained.

3 THE HEARING OFFICER: You will
4 absolutely have sufficient time to respond.
5 Absolutely. One thing about this, the
6 report is important for the Health Services
7 Council's consideration, and everyone is
8 going to have plenty of time to analyze it,
9 digest it and ask reasonable questions about
10 it. Miss Freedman?

11 MS. FREEDMAN: It seems to me,
12 pursuant to Paragraph 10 of this order,
13 we will receive Mr. Zimmerman's report ten
14 days prior to the presentation of his
15 testimony; and as he's done in the past, and
16 been very gracious in doing so, we have been
17 able to ask reasonable questions of him
18 during his testimony; so, I, I think that
19 it's taken care of already.

20 THE HEARING OFFICER: Does
21 that satisfy you, Mr. Normand?

22 MR. NORMAND: I thought we had
23 a provision in here that said the Department
24 could, was not subject to these limitations,

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1 and also, could submit information at any
2 time. So, I, you know, was just looking for
3 a more explicit clarification. I think you
4 provided that explicit clarification. You
5 know, if there are things like that report,
6 then we will have an opportunity to provide
7 that, so I'm fine with that.

8 THE HEARING OFFICER: Okay.

9 Thank you.

10 MR. DEVEREAUX: Yeah, I think
11 just to follow up, 8 and 10 need to be --
12 and I think I could, I'd feel comfortable
13 leaving it with the Hearing Officer in terms
14 of the interpretation; but 10, as
15 Miss Freedman points out, is going to give
16 us ten days. But 8, says, written
17 submissions by effected persons or the
18 Health Services Council may be received by
19 the Hearing Officer without regard to the
20 limitations placed on submissions by the
21 parties.

22 MR. NORMAND: That's all I
23 want to clarify.

24 THE HEARING OFFICER: That

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1 the things that happens from time to time in
2 hearings on licenses before the Division of
3 Health Services Regulations is some of the
4 hearings are not hearing officer hearings.
5 They are hearings before a panel of a board,
6 and inevitably, when the lawyers finish
7 asking whatever they want to get on that
8 record, the hearing panel member, who's
9 ultimately making a decision, has some
10 questions; and the Department, historically,
11 has always permitted that. No matter how
12 inarticulate or repetitious the questions
13 may have been, sometimes they ask questions
14 that we have been over a hundred times, but
15 they are coming from them, and this is all
16 about an appropriate decision that they have
17 to make, so...

18 MR. NORMAND: Understood. And
19 I don't think we are asking, and I don't
20 think I have heard anyone ask that we
21 restrict that. I was simply trying to make
22 the distinction of those reports that we
23 know are coming and are going to be
24 presented. You know, can we have it clear

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1 could be a little confusing along the way.
2 Mr. Devereaux makes a good point.

3 MR. MILLER: Well, we don't
4 know what the Health Services Council
5 Members -- they are an autonomous group, and
6 they have a lot to say about this whole
7 proceeding. So, there's, plus the fact
8 that, since they are going to make the prime
9 recommendation on this record, it's
10 imprudent to tell them what they can't do in
11 terms of input to the application. If the,
12 and I think, generically, we have to leave
13 open the possibility that one of the Members
14 would come in with something that they want
15 into the record at a particular time. I
16 don't want to preclude that. I think you
17 have discretion how to react to responses to
18 it, but I don't want to put a stumbling
19 block into the submission of it in the first
20 instance. I think you can take whatever
21 action you need to take to prevent prejudice
22 or to, or to accommodate surprise or
23 anything else.

24 THE HEARING OFFICER: One of

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1 on the record that there will be opportunity
2 to hear that, and 10, perhaps, can be
3 interpreted that way; but when it's read in
4 conjunction with 8, I would rather it come
5 up now rather than later in terms of what
6 the interpretation of that will be.

7 And I think we have clarified
8 that, if there are written reports, which
9 are distinct, that's a distinct type of
10 thing that what a Health Services Council
11 Member, my legitimately raise; but with
12 respect to those things that we know about,
13 we just want the ability to be able to react
14 to it. That's consistent with what happened
15 in '92.

16 THE HEARING OFFICER: You will
17 be; and as I said, it will be fair. The
18 point that Mr. Miller was trying to make,
19 and it's well taken, is the Council is going
20 to ask what the Council wants to ask, and we
21 are going to let that happen. The reasoning
22 behind this order is so we just don't have
23 an endless stream of paper coming into the
24 Department that just confuses the issues

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1 that need to be stated clearly and
2 consistently for the Health Services Council
3 and the Director of Health, so...

4 MR. NORMAND: Right.

5 THE HEARING OFFICER: Anything
6 else? So, why don't we do this?

7 MR. MILLER: We are going to
8 do due dates?

9 THE HEARING OFFICER: We are
10 going to do due dates. Let's do due dates
11 now then.

12 MR. MILLER: Can I make a
13 preliminary -- as we get into this remark,
14 Mr. McIntyre --

15 THE HEARING OFFICER: Sure.

16 MR. MILLER: One of the things
17 that we would like to see happen is to
18 encourage the Health Services Council
19 Members to personally attend as many of
20 these meetings and as many of them as
21 possible as these meetings go on, rather
22 than to ship out kind of dry documentation.
23 So, they meet -- Mr. Dexter can give you the
24 fill-in as to when they meet; and if there's

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1 any way that we can kind of guide these due
2 dates to conform to meetings that would
3 encourage their attendance, we think that
4 that would be beneficial.

5 THE HEARING OFFICER: I would
6 agree. We will leave that up to you and
7 Mr. Dexter.

8 MR. MILLER: Well, he's going
9 to say right now.

10 THE HEARING OFFICER: Okay.

11 MR. DEXTER: Yes. We will be
12 in front -- it is in front of Committee 1;
13 so, I think Tuesday afternoons would be
14 preferable.

15 THE HEARING OFFICER: Tuesday
16 afternoons?

17 MR. NORMAND: Can I ask a
18 question? For the due dates for two and
19 three, those seem to be due dates for
20 written submissions.

21 THE HEARING OFFICER: Correct.

22 MR. NORMAND: So, I'm not sure
23 whether we need to be constrained with the
24 schedule for that.

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1 MR. ZUBIAGO: Mr. Hearing
2 Officer, what it sounds like is you want to
3 schedule the hearing days on Tuesdays before
4 the Project Review Committee, so we are
5 talking about sometime before 2:30 on
6 Tuesdays for the days that we are going to
7 take testimony.

8 MS. FREEDMAN: That's fine.

9 MR. NORMAND: Yes.

10 MR. MILLER: Mr. McIntyre,
11 Mr. Dexter has a concern that he wants to
12 make sure that it's been explicitly covered,
13 and that is with the Number 13. Nobody
14 objected to it, but just to have it
15 straightforward, we expect 30 copies with
16 respect to those sections that are listed
17 there, two, three, four, five, six, seven
18 and ten, one pdf version only to the Office
19 of Health Systems Development. That is more
20 in the nature of an internal document to
21 give the Department some flexibility as to
22 people that might want to see it and how to
23 get it out and stuff like that. You know,
24 so, having said that, is that clear?

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1 MS. FREEDMAN: Yes.

2 MR. WALSH: Do you want the
3 pdf by e-mail?

4 MR. ADAMOVA: Yes.

5 THE HEARING OFFICER: The pdf
6 by e-mail. E-mail is not going to be
7 considered a filing for anything else,
8 because it's got to be distributed
9 appropriately. There are those Members on
10 the Council that just don't have the e-mail.

11 MS. FREEDMAN: When do you
12 want our summary?

13 THE HEARING OFFICER: The
14 summary. Mr. Dexter?

15 MR. DEXTER: Yes, sir.

16 THE HEARING OFFICER: Let's go
17 to Item Number 2, the due date for the
18 summary? What is the Department's pleasure
19 on that?

20 MR. DEXTER: Well, I would
21 like to keep this going as quickly as
22 possible, so you should ask the two parties
23 when they think they can get it in:

24 THE HEARING OFFICER: Well,

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1	Miss Freedman?	1	THE HEARING OFFICER: That is
2	MS. FREEDMAN: Well, what	2	a very helpful suggestion and probably the
3	about if I get you my summary by Thursday,	3	only way to do it rationally. Mr. Dexter?
4	the 22nd; is that fair?	4	MR. DEXTER: We have got a
5	THE HEARING OFFICER:	5	room every Tuesday in March and April
6	Mr. Dexter?	6	available, so, again, as soon as possible.
7	MR. DEXTER: I believe that we	7	What are we talking about going in front of,
8	are looking at two and three as	8	at the first hearing? If we are going to
9	simultaneous.	9	work backwards, we have to work from the end
10	MR. NORMAND: We weren't.	10	point back. The first hearing would be --
11	Only in that --	11	THE HEARING OFFICER: Today.
12	MS. FREEDMAN: I'm sorry?	12	MR. DEXTER: Right. The
13	MR. NORMAND: -- we clearly	13	second hearing, we are talking at this
14	need opportunity -- the question was that	14	point, Number 7. Mr. Hearing Officer, as
15	they were looking at due dates as being	15	far as, we would like to close the record by
16	simultaneous.	16	the end of April.
17	MS. FREEDMAN: Right.	17	MR. NORMAND: I think that's
18	MR. NORMAND: We weren't in	18	pretty aggressive.
19	that we need to have an opportunity to react	19	MS. FREEDMAN: I just don't
20	to some of the things that they are putting	20	think that's realistic.
21	in the summary.	21	THE HEARING OFFICER: I have
22	THE HEARING OFFICER: You're	22	to agree, Mike. I think --
23	going to have plenty of opportunity to react	23	MR. MILLER: Can I interpose,
24	later, but those dates are going to be	24	while there's a brief silence here --
	53		55
1	simultaneous. You will have plenty of	1	THE HEARING OFFICER: May 30,
2	opportunity to react. We have process of	2	I'm thinking.
3	plenty here.	3	MR. MILLER: Is there any
4	MS. FREEDMAN: So, is 3-22	4	issue here between the interested party,
5	okay for you guys?	5	Roger Williams Hospital, and Applicant to
6	MR. NORMAND: Yes.	6	waiving the 20 day -- 120 daytime frame,
7	THE HEARING OFFICER: 3-22-07	7	otherwise we are going to be in a real bind
8	will be the simultaneous due date for both	8	and things are going to be complicated? If
9	the Applicant and the interested party,	9	not, I would like it expressed on the
10	Roger Williams Hospital.	10	record.
11	THE HEARING OFFICER: The next	11	MR. NORMAND: We would be fine
12	due date is Item Number 5, the	12	with that. I think it is important for the
13	identification of witnesses.	13	facts to come out and get the information
14	MS. FREEDMAN: Can I make a	14	out.
15	suggestion?	15	THE HEARING OFFICER: The
16	THE HEARING OFFICER: Yes.	16	question is, will both parties be willing to
17	MS. FREEDMAN: It might be	17	waive the 120-day time period. From the
18	easier for us to give you a reasonable due	18	Department's standpoint, I think I can speak
19	date for that, if we can go backwards from a	19	for the Department on this, we are going to
20	hearing date; so, that if we know when the	20	do everything in our power to make the
21	hearing date is, we can say, okay, 20 days	21	deadline, with the understanding that the
22	before the hearing date we will tell,	22	deadline has probably never been met in the
23	whatever, 30 days, whatever. Is that fair?	23	history of CON.
24	Do you think that would be helpful?	24	MR. ZUBIAGO: And we
	54		56

1 participated in that, Mr. Hearing Officer,
2 with gusto.

3 THE HEARING OFFICER: I know
4 you have.

5 MR. ZUBIAGO: However, I did
6 have one recent experience where were waived
7 it and it went on for a real long time, and
8 actually, the other party in the room was
9 a part of it. I would like to not waive it
10 unconditionally. I would be willing to
11 waive it on the record from 120 days to 150
12 days with the agreement that it would be
13 revisited, but not to extend it
14 indefinitely.

15 MR. MILLER: How about 180?

16 MR. ZUBIAGO: How about 150?

17 MR. MILLER: Well, you said
18 that. I want to know what you can add to
19 it, otherwise we are going to be obliged to
20 put the pressure on you to meet these
21 deadlines; and I don't want to be in the
22 position to say, well, you know, we can't
23 meet this. We can't meet that.

24 MR. ZUBIAGO: Let me clarify

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1 what my concern is. I was involved in
2 another CON process where we waived it, and
3 there was an issue with one of the parties
4 in a joint venture, and the Department of
5 Health summarily suspended the CON review;
6 and we agreed in that hearing to not pursue
7 it, but we had given up any legal remedy for
8 restarting the review in that process.

9 THE HEARING OFFICER: Here's
10 what we are going to do.

11 MR. MILLER: I asked you for
12 180.

13 THE HEARING OFFICER: Here's
14 what we are going to do, Mr. Miller.

15 MR. MILLER: Go ahead.

16 THE HEARING OFFICER: Thank
17 you for the suggestion. There's a little
18 discomfort, reasonable discomfort here. As
19 we approach the deadline, we will visit the
20 issue at that time, and it will be a tight
21 schedule.

22 MR. MILLER: Well, the only
23 problem I have with that, Mr. McIntyre, is
24 that the Department, on the one hand, wants,

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1 as Mr. Dexter said three or four times, as
2 rapidly as possible. Then we hear other
3 people say that's not realistic, these time
4 frames. Now, those things conflict, as
5 rapidly as possible and the time frames are
6 not realistic, and we don't want to be
7 caught in the bind of having a situation --
8 the remedy is, incidentally, is to go to
9 Superior Court and ask the court to tell the
10 Department to move faster. So, it's not a
11 dismissal of the -- I'm trying to get some
12 kind of, on the record as we begin here.
13 Now, we -- he has agreed to waive it 30
14 days. I don't think that's realistic. I
15 think 180 days is more realistic. If
16 Mr. Zubiago doesn't want to go with that, he
17 can say so. You make whatever ruling you
18 want, but I have expressed at least what I
19 feel is the Office of Health Systems
20 Development's feelings on this.

21 MR. DEVEREAUX: We don't have
22 a problem going 180.

23 THE HEARING OFFICER:
24 Mr. Williams?

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1 MR. WILLIAMS: I would just
2 ask you to hold for Mr. Miller. The message
3 has been transmitted to him to present
4 formally.

5 THE HEARING OFFICER:
6 Miss Freedman?

7 MS. FREEDMAN: I was going to
8 suggest a public meeting date. I think that
9 we need to have flexibility, like we have in
10 the past; and I think everyone needs to be
11 reasonable, as we have in the past. So, I'm
12 not particularly concerned. I think that
13 everyone around this table understands it's
14 going to be difficult, but we all want to do
15 it right. We all want to give each other
16 appropriate time to present our positions,
17 and I think that we will all be reasonable
18 if we don't make 180 days as -- so, I'm, I
19 don't know what else to say. I think we
20 should try to get our public meetings on the
21 calendar and move back from there and go.

22 THE HEARING OFFICER: What I
23 had in mind was to close the administrative
24 record like May 30.

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1 MS. FREEDMAN: That's fine
2 with us.
3 THE HEARING OFFICER: That's
4 essentially what was on my mind.
5 MS. FREEDMAN: I think that's
6 reasonable.
7 MR. MILLER: Say that again.
8 THE HEARING OFFICER: Closing
9 the administrative record on May 30. That
10 was what I had in my mind. If it doesn't
11 work, you know, if there's some reasonable
12 and real reason why we need to extend it for
13 a little while longer, we can address it at
14 that time. I mean, it's not going to be
15 closed -- Mr. Miller?
16 MR. MILLER: Yes.
17 THE HEARING OFFICER: -- it's
18 not going to be closed at an inopportune
19 time and an unfair time for anybody. So,
20 for the purposes of this now, we are going
21 to make it May 30.
22 MR. DEXTER: I have a
23 question. We will reconvene when we get to
24 Item Number 7. The way I read this, that's

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1 the next time we are going to get together.
2 What date are we looking at for that?
3 THE HEARING OFFICER: Well --
4 MR. WILLIAMS: We will work it
5 backwards.
6 MR. DEXTER: I'm concerned
7 about May 30.
8 THE HEARING OFFICER: Linn had
9 suggested March 22, was it?
10 MS. FREEDMAN: I suggested for
11 our summaries March 22. Then I think if we
12 say that the closure is May 30, usually we
13 need one day to do closing summations and
14 answer questions by the Health Services
15 Council. So, we could do that maybe the
16 Tuesday before that, and then we can move
17 back. We can do, you know, a hearing date
18 on the 15th, a hearing date on the 1st, a
19 hearing date on the 8th.
20 MR. DEXTER: What are these
21 other hearing dates? They are not on the
22 schedule.
23 MS. FREEDMAN: I'm suggesting
24 that. The public meeting dates we have to

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1 put on the calendar so we can get our
2 witnesses, so that all the other deadlines
3 are going to be from the public meeting
4 date; so, if we have a public meeting date
5 on the 15th and Roger Williams Hospital is
6 going to present three witnesses on the
7 15th, then we know that five days before
8 that we have to get the summary of the
9 witnesses, et cetera. So, everything is
10 going to fall from the public meeting date,
11 so I'm just saying we should put the public
12 meeting dates on and work back from there
13 because all of our deadlines are contingent
14 upon that.

15 THE HEARING OFFICER: Mike?

16 MR. DEXTER: Mr. Hearing
17 Officer, the public meeting date is, there's
18 one or possibly two, depending upon if we
19 have to go six hours each, two public
20 meeting dates. That's when the witnesses
21 are going to be presented.

22 MS. FREEDMAN: That's what I
23 just said.

24 MR. DEXTER: But there's not

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1 going to be a meeting on the 15th, a meeting
2 on the 30th, a meeting on the 15th, a
3 meeting on the 30th. There's only going to
4 be two more meetings, according to this
5 schedule. The rest is in writing.

6 MR. ZUBIAGO: Where does it
7 say that?

8 THE HEARING OFFICER: Yeah,
9 Mike?

10 MS. FREEDMAN: In my
11 experience, it's going to be six hours,
12 right? Four hours for the presentation of
13 Rhode Island Hospital's case, two hours for
14 cross-examination; and then I assume that
15 Roger Williams Hospital is going to want to
16 put some evidence into the record. So, we
17 will probably need a hearing date or a
18 public meeting date for them and to give me
19 my two-hour reasonable questioning of their
20 witnesses. So, it seems, to me, since we
21 usually do this in two-hour blocks from 2:00
22 to 4:00 p.m. on afternoons or whatever, that
23 we are going to need more than two dates. I
24 could be wrong. If you want to do two

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1 eight-hour dates, that's fine.

2 THE HEARING OFFICER: The
3 anticipation was that we would be doing
4 four-to-six-hour days.

5 MS. FREEDMAN: That's fine.
6 Past experience we usually do them in the
7 afternoon.

8 MR. ZUBIAGO: Are we
9 contemplating starting at nine o'clock and
10 going to two o'clock or one o'clock?

11 THE HEARING OFFICER:
12 Generally speaking, we start hearings no
13 earlier than 9:30 here, just to make sure
14 everybody gets here.

15 MS. FREEDMAN: Okay.

16 THE HEARING OFFICER: But that
17 was what we have in mind, subject to the
18 availability of the rooms, which is always
19 an issue. We don't want to interrupt the
20 aerobics class.

21 MS. FREEDMAN: So, we have
22 twelve hours maximum, and then you have the
23 Department's, you have Mr. Zimmerman and
24 whatever else the Department wants to do.

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1 THE HEARING OFFICER: I could
2 see, foresee very easily three dates, four
3 dates, realistically.

4 MR. DEXTER: Okay. So, I'd
5 like to schedule the first date, and I don't
6 think May 30 is reasonable.

7 THE HEARING OFFICER: That's
8 the end. That's when everybody goes home.

9 MR. DEXTER: That's what you
10 said?

11 MS. FREEDMAN: I didn't say
12 that. I said that's the last day, and
13 usually we do presentations to the Health
14 Services Council maybe the week before.

15 MR. DEXTER: You're mixing
16 things up. We are not talking about in
17 front of the Council Members.

18 MS. FREEDMAN: I'm just moving
19 back from there. I'm moving backwards. So,
20 the end of the record will be May 30, right?

21 MR. DEXTER: Including the in
22 front of the Health Services Council as part
23 of the record?

24 MR. GROSS: No.

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1 MR. DEXTER: Why is the end of
2 the record May 30?

3 MS. FREEDMAN: Because the
4 Hearing Officer said that.

5 MR. DEXTER: I'm suggesting
6 it's not reasonable.

7 THE HEARING OFFICER: Why
8 don't we do this? Let's get everyone on the
9 same page. What did you envision for your
10 Council on this?

11 MR. DEXTER: I envisioned, if
12 we have March 22, which I think is quite
13 lengthy for a three-page summary; but if
14 that's what you agreed to, three pages, I
15 think that could be done.

16 THE HEARING OFFICER: Mike,
17 that's not the question.

18 MR. DEXTER: The question
19 is --

20 THE HEARING OFFICER: No, no,
21 no, you're going to answer my question. The
22 question is, this part of the procedure
23 happens before it goes to the Health
24 Services Council, right?

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1 MR. DEXTER: Correct.

2 THE HEARING OFFICER:
3 Miss Freedman is asking for one more
4 presentation date before the Council at the
5 end. Do I have this wrong?

6 MS. FREEDMAN: I'm actually
7 not asking for any additional time or
8 anything. I was just trying to help figure
9 out working backwards what would be
10 reasonable for everybody, knowing what
11 usually happens.

12 THE HEARING OFFICER: I don't
13 have a calendar in front of me.

14 Mr. Devereaux has got one. May I see it.

15 (HANDED TO HEARING OFFICER)

16 THE HEARING OFFICER: Why
17 don't we go off the record now so we can
18 figure out who's on first?

19 (SHORT RECESS)

20 THE HEARING OFFICER: We are
21 back on the record after a brief discussion
22 regarding dates and waiver of the 120-day
23 rule. It's my understanding that counsel
24 for Rhode Island Hospital has agreed to

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1 extend the 100-day determination rule up
2 until 180 days but no further; is that
3 correct, counselor?

4 MR. ZUBIAGO: That is
5 correct.

6 THE HEARING OFFICER:
7 Secondly, we seem to have an agreement --

8 MR. NORMAND: Can we discuss
9 that for a moment? The but no further part,
10 I thought we had discussed or you had said
11 as we get closer to a deadline, if there
12 looks like there's going to be some issues,
13 we are reasonable parties, and we will
14 discuss it.

15 THE HEARING OFFICER: He's not
16 agreed to but no further. He's agreed to
17 but no further; but in my discretion, if we
18 need a little extra time, then there will be
19 a little extra time.

20 MR. NORMAND: I'm not going to
21 drag it out. My impression was it was a
22 concrete absolute.

23 MS. FREEDMAN: We will revisit
24 it as necessary.

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1 MR. NORMAND: Thank you for
2 the clarification.

3 THE HEARING OFFICER: The next
4 issue was the commencement of the public
5 meeting and testimony part of the process.
6 My understanding is the counsel has agreed
7 to Tuesday, May 15 at 9:30 a.m. to commence
8 the public hearing; is that right?

9 MS. FREEDMAN: That's correct.

10 MS. O'CONNELL: Correct.

11 THE HEARING OFFICER: Is there
12 anything else for today?

13 MS. FREEDMAN: I would like,
14 I'm sorry. I would like to discuss the due
15 date for the documents to be exchanged
16 between the parties and I would propose --

17 MR. NORMAND: Is this for
18 Paragraph 6?

19 THE HEARING OFFICER: Dates to
20 be established.

21 MS. FREEDMAN: I would propose
22 Friday, April 20, by 4:30 p.m., mutual
23 exchange of documents. Is that -- I'm
24 throwing that out.

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1 THE HEARING OFFICER: Does
2 anyone object to that, Friday, April 20,
3 close of business, 4:30?

4 MR. DEVEREAUX: We would like
5 five o'clock. Only kidding.

6 THE HEARING OFFICER: This is
7 a State building. The most dangerous place
8 in the State of Rhode Island is in front of
9 that door at four o'clock.

10 MS. FREEDMAN: Can I also
11 propose that we have a deadline for the
12 exchange of witness lists and the summary of
13 the witnesses' testimony for sometime after
14 the documents or sometime after April 20,
15 maybe?

16 THE HEARING OFFICER: One
17 week?

18 MS. FREEDMAN: May 4 or one
19 week, that's fine.

20 THE HEARING OFFICER: Yes,
21 that's all right. April 27.

22 MR. DEVEREAUX: That's the
23 witness summary sheet.

24 THE HEARING OFFICER: Why

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1 don't we do this then? Why don't respective
2 counsel work on an order, and it will
3 incorporate -- Mr. Devereaux?

4 MR. DEVEREAUX: Yes.

5 THE HEARING OFFICER: It will
6 incorporate what we talked about today and
7 the dates we talked about today. Once you
8 agree on an order, send it along to me for a
9 signature, and it will become part of the
10 record.

11 MS. FREEDMAN: We will use
12 this as a foundation.

13 THE HEARING OFFICER: Yes.

14 MS. FREEDMAN: That's fine.

15 THE HEARING OFFICER: If you
16 need the template, if this would be helpful,
17 I can e-mail it to you.

18 MS. FREEDMAN: That would be
19 great.

20 THE HEARING OFFICER: Does
21 that sound good? I will e-mail the template
22 out to you this afternoon, and you will work
23 on an order, and I will sign it as soon as
24 you agree, okay

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1 MS. FREEDMAN: All right.
2 THE HEARING OFFICER: Anything
3 else for today. Thank you for a very
4 productive meeting.
5 MR. DEVEREAUX: Thank you.
6 MS. FREEDMAN: Thank you.
7 (SHORT RECESS)
8 MR. MILLER: We didn't talk --
9 in the beginning you indicated,
10 Mr. McIntyre, that we discussed rebuttal.
11 Was this discussion just that we just finish
12 the subject of rebuttal? Is that what we
13 were talking about?
14 THE HEARING OFFICER: Well, in
15 large measure, yeah, sort of.
16 MR. MILLER: Sort of. Is
17 there any, any formal approach to rebuttal
18 that you are going to take here, or are we
19 just going to kind of play it at your
20 discretion? It's okay with me either way.
21 THE HEARING OFFICER: What I
22 had anticipated this meeting would do would
23 be to stipulate, among the parties, how we
24 were going to go about conducting the

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1 hearing rather than me having to make the
2 decisions. I think it's better if you all
3 make them; and if there's something in that
4 regard that you want to make part of this
5 order, we will consider it now. I mean
6 that's... or you can discuss it among
7 yourselves. You can have it your way. This
8 is really not...

9 MR. DEVEREAUX: What about
10 this for a suggestion? If we are, we are
11 coming out and exchanging the peace pipes on
12 the 20th, after we get each others
13 information, if there's some supplemental --
14 I mean you can't anticipate all rebuttal,
15 but if there's some supplemental material
16 that we want to submit, have a week after
17 that, say the 27th, to do that.

18 MS. FREEDMAN: That's fine.

19 MR. MILLER: So, that covers,
20 at least in some general way, the rebuttal
21 issue.

22 THE HEARING OFFICER: One
23 week, but we don't want to have rebuttal to
24 the rebuttal, the second and third tier of

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1 this.

2 MR. DEVEREAUX: Right.

3 MR. MILLER: The other point
4 that I'm making is there any way that we
5 could consider other dates for oral
6 testimony at this time?

7 MR. DEXTER: We are not going
8 to get back together until the 15th, so we
9 would rather not be scheduling the
10 additional dates on the 15th.

11 THE HEARING OFFICER: Why
12 don't you do this? Why don't you discuss
13 among yourselves what you think those dates
14 should be? In other words --

15 MS. FREEDMAN: That's fine.

16 THE HEARING OFFICER: And make
17 it part of the stipulated order.

18 MS. FREEDMAN: Because then we
19 can check with our witnesses' availability.
20 I guess the only thing, Mr. McIntyre, is we
21 would need to know what dates aren't good
22 for you all.

23 MR. DEXTER: We need to be
24 part of the discussion.

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1 MS. FREEDMAN: If you all
2 could just e-mail counsel with, you know,
3 these dates are not good, then we could work
4 with the schedule.

5 MR. ZUBIAGO: How about if we
6 talk to counsel and then we go to the
7 Department with the dates we agree upon.

8 THE HEARING OFFICER: I'm
9 going to have the reasonable presumption
10 that we are going to be at work, you know,
11 unless the Governor locks the front door,
12 which could happen.

13 MS. FREEDMAN: That's fine.

14 THE HEARING OFFICER: So, you
15 know, just do what you normally do. Include
16 the Department in on that, and me, so I can
17 at least follow the conversation; and you
18 will come up with an appropriate set of
19 dates.

20 MR. MILLER: We should have
21 some kind of an ongoing schedule.

22 MR. DEVEREAUX: Could I
23 suggest one thing? I mean, if we have any
24 problems getting the other dates, I mean we

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1 are going to exchange documents on the 20th.
2 We could have a short -- if we need to, we
3 could have a short meeting on the 20th and
4 pick the other dates.

5 MS. FREEDMAN: We are out of
6 state. We can pick it another day.

7 MR. DEVEREAUX: I just...

8 MR. NORMAND: We can find some
9 day to get together.

10 MR. WILLIAMS: I think it
11 would be good to schedule as many of the
12 dates now, because people's calendars will
13 get filled up. This is a priority to the
14 Department.

15 THE HEARING OFFICER: He makes
16 a poignant point. I can tell you right now,
17 while my schedule looks clear, I will
18 have -- I have --

19 MR. DEVEREAUX: Before May --

20 THE HEARING OFFICER: -- a
21 trial before a judge sometime in June.
22 Probably ten hearings --

23 MR. MILLER: Well, this is why
24 I raised the issue.

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1 MR. DEXTER: How about May 22?
2 THE HEARING OFFICER: And
3 everybody thinks they are the most important
4 hearing.

5 MS. FREEDMAN: I have a trial
6 that day already. I could do like the 24th
7 or the 25th. Are you trying to keep to
8 Tuesdays?

9 MR. DEXTER: I don't think we
10 are going to be able to, at this point.

11 MS. FREEDMAN: I can do
12 Tuesday, the 29th.

13 MR. NORMAND: I think the
14 suggestion we had before, if the Department
15 could send us available dates and we would
16 work on that, then they --

17 MR. DEVEREAUX: I think that
18 works.

19 MR. DEXTER: How much time do
20 you need between the first -- do you need
21 time -- let's assume that the first day we
22 do the four hours and two.

23 MS. FREEDMAN: I could do it
24 the next day, the day after.

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1 MR. DEVEREAUX: Two days is
2 always good. Get started the 15th and then
3 maybe the 17th.

4 MR. ADAMOVA: For you guys?

5 THE HEARING OFFICER: Let's go
6 off the record.

7 (OFF THE RECORD)

8 THE HEARING OFFICER: At this
9 point, we will go back on the record. I
10 will ask officially are there any more
11 issues for today?

12 MS. FREEDMAN: No.

13 MR. ZUBIAGO: No.

14 MR. DEVEREAUX: No.

15 MR. NORMAND: No.

16 THE HEARING OFFICER: We have
17 a group no. Thank you very much.

18 (HEARING ADJOURNED AT 3:25
19 P.M.)

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1 C-E-R-T-I-F-I-C-A-T-E

2 I, MARY ELLEN HALL, Notary Public, do
3 hereby certify that I reported in shorthand
4 the foregoing proceedings, and that the
5 foregoing transcript contains a true,
6 accurate, and complete record of the
7 proceedings at the above-entitled hearing.

8 IN WITNESS WHEREOF, I have hereunto
9 set my hand and seal this 16th day of March,
10 2007.

11 _____
12 MARY ELLEN HALL, NOTARY PUBLIC/
13 CERTIFIED COURT REPORTER

14 IN RE: Roger Williams Hospital CON
15 Application

16 DATE: MARCH 9, 2007

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